

Standards of Conduct) D.P.U. 97-96

Essex County Gas Company ('Essex' or the 'Company') submits these Initial Comments in response to the Notice issued by the Department of Public Utilities, now the Department of Telecommunications and Energy (the 'Department'), on October 17, 1997 (the 'Order'). In its Order, the Department proposes to revise the Standards of Conduct set forth at 220 C.M.R. 12.00 ~~et seq.~~ to make such regulations applicable to the relationship between distribution companies regulated by the Department pursuant to G.L. c. 164 and all affiliates of such distribution companies.

In its Order, the Department proposes to revise 220 C.M.R. 12.02(2) to broaden the applicability of the existing Standards of Conduct to govern the relationship between the distribution company and all affiliated companies. Essex believes that this would impose a substantial and unnecessary burden

on distribution companies regulated by the Department pursuant to G.L. c. 164, while providing no additional protection for customers.

Specifically, the Department stated that the primary focus of this rulemaking is to protect customers from improper cross-subsidization between a distribution company and its affiliates. Order at 3. To that end, Essex notes that, pursuant to G.L. c. 164, the Department has significant authority, without the standards of conduct, to resolve cross-subsidization issues between the distribution company and any of its affiliated companies. For instance, the Department's ratemaking authority,¹ ensures that distribution companies appropriately allocate costs between the distribution company and its affiliates and distribution companies are unable to invest in other activities without the approval of the Department.

Thus, the Department's proposal to revise the definition of a Competitive Affiliate set forth at 220 C.M.R. 12.02(2) to include all affiliates would impose a substantial and unnecessary burden on regulated distribution companies and providing no additional protection for customers. Essex believes that the Department's proposed definition would prohibit the distribution company from sharing information or employees not related to general administrative support activities with a parent company or any other regulated or non-competitive affiliate company. Costs associated with these relationships are allocated consistent with Department precedent and have been reviewed by the Department in many contexts.

In addition, the proposed expansion of the standards of conduct would prohibit a distribution company from providing any product or service other

¹ The Department has specific statutory authority under G.L. c. 164, ?? 17A, 76A, 85, 85A, 94, 94B and 94C to investigate cross-subsidization issues.

Initial Comments of Essex County Gas

Company

D.P.U. 97-96

November 25, 1997

Page 3

than general and administrative support services? to an affiliated regulated or non-competitive company unless they make the same products or services available to ?all Non-affiliated Suppliers or customers of Non-affiliated Suppliers, on a non-discriminatory basis.? 220 C.M.R. 12.03(4) (proposed). However, the meaning of the term ?Non-affiliated Suppliers? is indeterminate when applied to the relationship between the distribution company and any affiliate not engaged in the marketing or sale of a product or service to a competitive market. Therefore, the proposed definition is inconsistent with the operation of the rules and would create substantial barriers to compliance. Since the Department has significant authority and opportunity to review cost allocations between a distribution company and its parent or a distribution company and another regulated or non-competitive affiliate, additional regulation in this context is unwarranted and problematic.

Essex believes that the interests of customers are protected through the well-established cost-allocation and investment restrictions imposed on regulated distribution companies. Therefore, application of the standards of conduct to non-energy activities would provide no incremental benefit to customers, while restricting the ability of the affiliate to compete on an equal footing in its market.

Initial Comments of Essex County Gas

Company

D.P.U. 97-96

November 25, 1997

Page 4

Another concern that Essex has with regard to such an extension of the standards of conduct is that the operation of the rules is not consistent with the application of such rules to an affiliate engaged in non-energy activities. The great majority of the rules govern situations that would not arise or be relevant to a non-energy market, such as the application of tariff terms, the use of an electronic bulletin board, the processing of requests for services by the distribution company and customer information requirements. Moreover, distribution companies will have difficulty identifying "Non-affiliated Suppliers" in a fully competitive market where there may be literally hundreds of such suppliers and therefore, compliance with the rules that refer to "Non-affiliated Suppliers" would be time-consuming and costly. Most importantly, there are inherent difficulties in establishing a set of rules to govern a particular relationship when only some of the rules can be applied to that relationship. From the Department's perspective, the rules will be virtually impossible to enforce in an even-handed manner since distribution companies will be forced to pick and choose between the rules to determine which may apply to a given activity. Thus, the effectiveness of the rules with regard to the more important objective of preventing preferential treatment of an energy-related affiliate will be significantly decreased.

Initial Comments of Essex County Gas
Company

D.P.U. 97-96

November 25, 1997

Page 5

e:\esex\96-44\9796initial comments.doc